

MEETING RECORD

NAME OF GROUP: City Board of Zoning Appeals

DATE, TIME AND

PLACE OF MEETING: Friday, January 26, 2001, 1:30 p.m., City Council Chambers,
555 South 10th Street, Lincoln, Nebraska

MEMBERS AND OTHERS

IN ATTENDANCE:

Members:	Linda Wibbels, Gerry Krieser, George Hancock, and Curt Olson
Others:	Rick Peo (City Law Dept.), Rodger Harris (Bldg. & Sfty.), Ray Hill and Missy Minner (Planning Dept.), applicants and other interested parties.

STATED PURPOSE

OF THE MEETING: Regular Meeting of the City Board of Zoning Appeals

Chair Olson called the meeting to order and requested a motion approving the December 15, 2000 minutes. Motion for approval made by Wibbels, seconded by Krieser. Motion carried 4-0; Wibbels, Krieser, Hancock and Olson voting 'yes'.

City Board of Zoning Appeals No. 2299

Requested by Sharon K. Heusman for a variance to the rear yard on property located at 5801 Sumner.

PUBLIC HEARING

January 26, 2001

Members present: Krieser, Hancock, Wibbels, and Olson

Sharon Heusman presented a letter of support from her neighbor, Theo Sonderegger, and copies of a survey of her property.

Sonderegger is her neighbor to the south and one of the first three people to build in the area. Sonderegger purchased a portion of Heusman's rear lot from a previous owner to maintain a couple of large oak trees. Heusman has never owned that portion of the lot. That is the reason Heusman's lot is irregular and why she is requesting a variance and claiming the east yard as the rear yard. The lot is also irregular on the east. Requesting the variance on the east yard as the rear yard, she will be able to go further back with the addition she is proposing.

Either yard can be claimed as the rear yard since this is a corner lot. At the last meeting the concern of setting a precedent was raised. In her opinion, this would not be setting a precedent because there are a considerable number of corner lot homes with small rear yards.

Olson asked if there is a possibility for her to purchase the part of her lot that had been sold. She didn't believe the owner would be willing to sell it.

John Luethje appeared. He stated that there are always irregularities on corner lots. This problem was created when the previous owner sold that portion of the lot. The proposed addition will include a family room and office, without the variance they are limited to 8', that would create more of a hallway than a room.

The improvements made to the property have improved the neighborhood and property. There is no basement or storage area in the house that could be used for expansion.

With no one further appearing, the public hearing was closed.

ACTION

January 26, 2001

Members present: Krieser, Hancock, Wibbels, and Olson

Wibbels moved approval, seconded by Krieser.

Wibbels explained that she feels more comfortable recommending approval this time. Corner lots are irregular. She understands the handicaps one has on non conforming lots in existing neighborhoods. She appreciates that City code allows some adjustments. In this case taking the east yard as the rear yard allows the addition to be in compliance. They really only need about 6 or 7 inches from where the side yard begins to be in compliance. She can appreciate that the neighbors don't want to sell that portion of the lot. She also appreciates that the neighbors support this addition.

Hancock didn't think the Board had the authority to grant the variance. It is a judicial body, not a legislative body. A hardship does exist in this instance, but how excessive is it? They can not grant a variance for the purpose of enhancing the value of property.

Wibbels was of the opinion that it is not the Board's position to determine the extent of the hardship.

Olson read an excerpt from a memo from Rick Peo that sites Alumni Control Bd., Alpha Psi Chapter v. City of Lincoln, 179 Neb. 194, 137 N.W.2d 800 (1965), which states:

There is essentially no difference here from any case in which an owner desires to expand, but finds himself with not enough property to do so and also meet the conditions of the ordinance. The mere fact that the plaintiff would like to have a fraternity house of larger dimensions does not establish practical difficulty in complying with the ordinance. The plaintiff's basic position is apparently that where the desire to expand a permitted use of the premises beyond the area restrictions of the zoning code is motivated by practical or economic reasons, this constitutes a "practical difficulty" and requires the granting of an area variance. We cannot agree.

Motion for approval resulted in a tie vote 2-2; Wibbels and Krieser voting 'yes', Hancock and Olson voting 'no'. Action on this item will be carried over to the February 23rd meeting.

City Board of Zoning Appeals No. 2301

Requested by Lois Cockerham for a variance to the rear yard and a variance to the height of an uncovered deck more than 3 ft. above grade is allowed to project into the rear yard on property located at 5701 Vine Street.

PUBLIC HEARING

January 26, 2001

Members present: Krieser, Hancock, Wibbels, and Olson

Lois Cockerham, 5701 Vine Street appeared. This is a request for two variances on her property. Vine Street from just west of Cotner Boulevard to somewhere around Culler Junior High is going to be widened in March or April through October of this year. Their property has a very steep driveway, it is currently too steep to meet City codes. When the street is widened, because of the curb moving in toward the property, it will be too steep for a car to safely drive up into the garage.

She distributed to the Board copies of a letter from Clint Thomas in which he states that it is the opinion of Public Works Engineers that a driveway any steeper than this would be unusable.

The lanes will be widened to a normal width by City. When they talked with the City about how to make the drive better accessible, it was suggested that they move the garage to the east of the house. They felt that was a good idea. After contemplating what would be done with the old garage space and the new garage, they felt they would prefer to have a double stall attached garage, rather than a single stall detached garage as was suggested. The attached double stall garage could go in the same space without going any further toward the lot line.

This situation was created by the widening of Vine Street. They would not be requesting the variance if Vine Street was not going to be widened.

By placing the garage to the east of house they lose their 6.3' by 12.3' storage shed. They don't want to lose any more yard space by relocating the shed elsewhere on the property. They would like to replace the lost storage space by building an attic storage area above the garage. This space would be used for items such as lawnmowers, snowblowers, and bicycles. Since those items are fairly large and bulky, they would like to build an exterior stairway to access the storage area. They feel this would be safer than a pull down type stairway for getting the items into the storage area. The platform extends to the east of side of the garage in order to save an existing tree.

The neighbors to south and east are supportive of the proposed addition. They feel it would increase the value of the property, henceforth increasing the value of theirs. None of the neighbors have objected to this being done to the property.

Wibbels asked if this would be a tuck under garage.

Cockerham indicated that it would. It will actually be below ground on the rear end, so that it will be a more level driveway off of Vine Street. It will be sunk between 2.5' and 3'.

Wibbels indicated difficulty understanding the function of the deck.

Cockerham explained that the attic will be used for storage only. This is not a recreational deck, it is a landing to get into the attic. There will not be a door from the garage to the house, the upper door is only for the attic. There will be no stairs to the storage area inside the garage.

Krieser asked what the existing garage space will be used for. Cockerham stated that it would be made into an extension of the living room and a third bedroom.

Olson asked if they have considered building a smaller garage without a variance.

Cockerham explained that there is no parking on Vine Street. There is very little parking on 57th Street. They would like to use this opportunity to increase the value of the property in any way they can. Yes, they did consider it.

Clint Thomas, City Real Estate Division appeared. He verified that the street widening is the cause of all these problems. Initially they spoke with the Cockerhams about numerous possible solutions for the existing garage, most of those included dropping the garage floor which didn't work out from construction stand point. Compensation was paid for them to build a single stall garage. He would ask the Board to look favorably upon this request. It is not the City's intention to create an unusable or less desirable situation for the property owners.

Wibbels asked if the variance on the garage is granted would the deck automatically fit in to that variance.

Rodger Harris stated that it would depend on whether they had access to the upper storage. If the rear yard is varied to the south, then the variance on the deck is necessary because it is entirely within the rear yard. Decks can be in the rear yard, but only at an elevation of 3' above ground level.

Olson asked if this could be called anything other than deck, for example a fire escape or stairway.

Harris stated that would not be possible at this size. Those terms could only be used for a people passage.

With no one further appearing, the public hearing was closed.

ACTION

January 26, 2001

Members present: Krieser, Hancock, Wibbels, and Olson

Wibbels stated that the stairs could be located inside the garage. The deck and exterior stairway are not needed. They are being forced into one issue, but the exterior stairway is a desire issue.

Rick Peo stated that the Board must look at what remains of the property after the taking.

Krieser moved approval, seconded by Wibbels.

Hancock was hoping to treat these as separate issues. The double garage makes up for the lost storage, but there are other ways to accomplish this. He had a problem with the access to the storage space.

Wibbels explained that she doesn't agree that the second stall makes up for the lost storage, she believes the second stall makes up for the lost parking. The storage in the attic replaces the shed. Peo's statement is the reason she feels they should take these together.

Motion for approval failed 2-2; Wibbels and Krieser voting 'yes'; Olson and Hancock voting 'no'.

Hancock moved approval of the variance to the rear yard, seconded by Wibbels.

Wibbels stated the supporting discussion was introduced by the Real Estate employee. This was created by the street widening project. The second stall allows compensation for the lost parking.

Olson stated that they were compensated for the property taken. In this case, they had a single stall garage and are trading it for a double stall garage that is slightly small. The trade off here is that there is a reasonable use issue. There is a site issue of practical difficulty.

Motion for approval of the variance to the rear yard carried 4-0; Hancock, Wibbels, Krieser, and Olson voting 'yes'.

Olson moved denial of the variance to deck height, seconded by Hancock.

Olson indicated that the exterior stair goes beyond dealing with setbacks. That is a design issue. An alteration to the design might allow an exterior stair without a variance.

Wibbels stated that a pull down stair could be placed in several locations inside the garage.

Motion for denial carried 4-0; Olson, Hancock, Krieser, and Wibbels voting 'yes'.